No. 84-1513

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1984

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,
VS.
DANTE CARLO CIRAOLO,
Respondent.

On Writ of Certiorari to the California Court of Appeals for the First Appellate District

BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION AND THE AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE[1]

This case presents the question whether law enforcement officers, without probable cause and without a search warrant, may conduct aerial surveillance of the private area immediately surrounding a home, or "curtilage," which the homeowner has protected from public view.

The American Civil Liberties Union ("ACLU") is a national, nonprofit organization of persons dedicated to

[1] Letters from counsel for both parties consenting to the filing of a brief amici curiae are submitted with this brief.

safeguarding civil rights and civil liberties. The American Civil Liberties Union of Northern California ("ACLU-NC") is the regional affiliate of the ACLU. These amici curiae submit this brief because the argument advanced to support the activities of the police in this case would, if accepted, fundamentally alter our historic expectations that the home and its immediate surroundings are areas in which people may maintain privacy in their intimate human relations and affairs. Reversal of the decision of the California court in this case would destroy an expectation of privacy which must be protected from intrusive, technologically enhanced, governmental surveillance if the purpose of the Fourth Amendment is to be achieved.

SUMMARY OF ARGUMENT

In *Katz* v. *United States* (1967) 389 U.S. 347, 351-352, the Court set out a framework for resolution of Fourth Amendment questions, which made clear that what a person seeks to preserve as private may be constitutionally protected. The principle applies to a person making a call in a public telephone booth, and should apply with even greater force to a person enjoying his private backyard. Both individuals have reasonable expectations of privacy which the state cannot invade without first obtaining a search warrant.

In contrast to "open fields," in which a person has diminished privacy interests and expectations, curtilage, the outdoor area immediately surrounding the home, was considered by the common law to be part of the home itself for search and seizure purposes. It is an area where intimate and private human activities historically have occurred, and must be permitted to continue to occur, free from intrusive governmental surveillance, if privacy interests that lie at the core of our constitutional form of government are to be preserved. Private activities which are closely associated with and occur nearby the home

should not be invaded by inquisitive law enforcement officers without warrants (*Oliver* v. *United States* (1984) 466 U.S. ____, 104 S.Ct. 1735, 1741).

Technological advances in the area of surveillance threaten to undermine the individual's right to be secure in his or her home from unreasonable searches. It is true that matters which a person knowingly exposes to routine public observation may also be viewed by the police. This Court's decisions equally recognize that privacy interests in the home which a person takes reasonable precautions to protect from public view do not evaporate simply because the police may invade them by non-physically intrusive methods of technological surveillance (*United States* v. *Karo* (1984) 468 U.S. ____, 104 S.Ct. 3296; *United States* v. *Knotts* (1983) 460 U.S. 276). The Fourth Amendment must not be interpreted so narrowly that the police can fundamentally alter historically recognized privacy interests in the curtilage by resorting to innovative surveillance methods. The warrant requirement and the crucial probable cause standard, both specified by the constitutional text, are necessary protections to ensure that the general public is safe from overzealous state intrusions into intimate private matters.

ARGUMENT

I. MR. CIRAOLO POSSESSED A REASONABLE EXPECTATION OF PRIVACY IN HIS ENCLOSED BACKYARD, WHICH WAS ENTITLED TO FOURTH AMENDMENT PROTECTION.

Since *Katz* v. *United States* (1967) 389 U.S. 347, the touchstone of Fourth Amendment analysis has been whether a person has a "constitutionally protected reasonable expectation of privacy" (*Oliver* v. *United States* (1984) 466 U.S. ____, 104 S.Ct. 1735, 1740). In *Katz*, the Court held that FBI agents had violated the Fourth Amendment by failing to obtain a search warrant before

installing an electronic listening and recording device in a public telephone booth to obtain evidence against Katz, a suspected bookmaker. The Court recognized that, because of the advent of eavesdropping devices, people's privacy could be unconstitutionally invaded without the necessity of a technical trespass (*Katz* v. *United States* (1967) 389 U.S. 347, 353; see id. at 362 (Harlan, J., concurring)). The Court stated that "what [a person] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected" (id. at 351-352). [2] In his concurrence in *Katz*, Justice Harlan stated the standard for determining whether particular searches violated the Fourth Amendment as a two-part test: "first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable' " (id. at 361).

In the instant case, there is no question that Mr. Ciraolo exhibited a subjective expectation of privacy, and that this expectation was reasonable. He protected his backyard from outside observation by an exterior fence six feet in height and by an interior fence rising about 10 feet, which connected the perimeter fence to the house (Joint Appendix 11-12, 37-38). This act put the police (and everyone else) on notice that Mr. Ciraolo had demarcated an area of privacy. As the Court has stated:

> "One of the main rights attaching to property is the right to exclude others, see W. Blackstone, Commentaries, Book 2, ch. 1, and one who owns or lawfully possesses or

[2] The *Katz* Court also reiterated the rule that warrantless searches are per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions (389 U.S. at 357)—none of which are relevant to the case presently before the Court (e.g., search incident to arrest (*United States* v. *Robinson* (1973) 414 U.S. 218, 235); search associated with "hot pursuit" (*Warden* v. *Hayden* (1967) 387 U.S. 294, 298-299); search pursuant to consent (*Schneckloth* v. *Bustamonte* (1973) 412 U.S. 218, 222); and search for evidence threatened with removal or destruction (see *Johnson* v. *United States* (1948) 333 U.S. 10, 15)).

> controls property will in all likelihood have a legitimate expectation of privacy by virtue of this right to exclude" (*Rakas* v. *Illinois* (1978) 439 U.S. 128, 144, n. 12).

The area searched in this case, Mr. Ciraolo's private backyard, was subject to a greater expectation of privacy than the public telephone booth in *Katz*. A person who swims in the family pool or sunbathes on the backyard patio expects to be free to engage in these activities without being scrutinized from the air (see Brief for Petitioner on Writ of Certiorari, hereinafter "Br. for Petitioner," 9 (photograph revealed Mr. Ciraolo's yard, family swimming pool, patio and sun umbrella)).

It would be preposterous to assert that Mr. Ciraolo surrendered his expectation of privacy by failing to prevent a specially chartered police surveillance plane from inspecting his property. Under the Fourth Amendment, surely a person should not be required to erect a roof or canopy blocking the air and the light of the sun to preserve a privacy interest in his own backyard.[3] A person need only take "normal precautions to maintain his privacy—that is, precautions customarily taken by those seeking privacy" (*Rakas* v. *Illinois*, supra, 439 U.S. at 152 (Powell, J., concurring)). In *Katz*, for example, the individual had only to close the glass door of the telephone booth behind him (*Katz* v. *United States*, supra, 489 U.S. at 352). [4]

[3] See *United States* v. *Allen* (9 Cir. 1980) 675 F.2d 1373, 1380, certiorari denied (1981) 454 U.S. 833 ("[A] person need not construct an opaque bubble over his or her land in order to have a reasonable expectation of privacy * * *.").

[4] Even if Mr. Ciraolo were aware that his neighborhood was subject to air surveillance, his Fourth Amendment protections would not disappear. Continued violations should not be allowed to justify themselves. Along the same lines, the Court in *Smith* v. *Maryland* (1978) 441 U.S. 735, 740-741, n. 5, proposed a hypothetical in which the government suddenly announces on nationwide television that all homes would henceforth be subject to warrantless entries. Expectations of privacy would be destroyed, but not reasonably, and the Fourth Amendment would still be violated.

In its recent decision in *Oliver* v. *United States* (1984) 466 U.S. ____, 104 S.Ct. 1735, this Court, while not resolving the question presented here (see id. at 1742, n. 11), sharply distinguished between the reasonability of an individual's historically recognized privacy interest in the "curtilage," or area immediately surrounding the home, and an "open field." Sustaining the search of "open fields" in that case, the Court noted that several factors determine whether a privacy interest is entitled to Fourth Amendment protection, including the intention of the Framers, the uses for which a particular location is customarily employed and "our societal understanding that certain areas deserve the most scrupulous protection from government invasion * * *" (id. at 1741). In light of these factors, it concluded that "an individual may not legitimately demand privacy for activities conducted out of doors in fields, *except in the area immediately surrounding the home*" (ibid.) (emphasis added). The Fourth Amendment "reflects the recognition of the Founders that certain enclaves should be free from arbitrary government interference," particularly the "sanctity of the home" (ibid.). Further,

> "the common law distinguished 'open fields' from the 'curtilage,' the land immediately surrounding and associated with the home. * * * At common law, the curtilage is the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life,' * * * *and therefore has been considered part of home itself for Fourth Amendment purposes*" (id. at 1742) (emphasis added). [5]

[5] The Court cited with approval lower court decisions which enforced Fourth Amendment protections in the area immediately adjacent to the home (104 S.Ct. at 1742). See also *Payton* v. *New York* (1979) 445 U.S. 537, 587, quoting *G.M. Leasing Corp.* v. *United States* (1976) 429 U.S. 338, 354 (distinguishing between a warrantless seizure in open area and on private premises); *Air Pollution Variance Bd.* v. *Western Alfalfa* (1974) 416 U.S.

(footnote continued on next page)

The State's arguments to the contrary rest on fundamental misconceptions repeatedly rejected by this Court's decisions. Primarily, the State argues that the historical protection of the curtilage extends only to "warrantless physical intrusions" (Br. for Petitioner 12; see id. at 20-21), despite this Court's repeated holdings that a physical trespass is neither necessary (see, e.g., *Katz* v. *United States*, supra, 389 U.S. 347, 353) nor sufficient (*Oliver* v. *United States*, supra, 104 S.Ct. 1735) to establish a Fourth Amendment violation.

Similarly, the State asserts that Mr. Ciraolo's subjective expectation was that the police would not discover his contraband, and concludes that such an expectation is unreasonable (Br. for Petitioner 16-21). Under this analysis, Katz would not have been protected by the Fourth Amendment since his subjective expectation was that the FBI agents would not overhear his telephone conversation. The correct approach is to focus on expectations of privacy which people generally have in their homes and backyards (or, in *Katz*, the telephone booth), rather than solely on suspected unlawful activity occurring there. What is critical is that a person has sought "to preserve [something] as private" (*Smith* v. *Maryland* (1978) 442 U.S. 735, 740, quoting *Katz* v. *United States*, supra, 389 U.S. at 351). As one court stated:

> "We take this first factor to mean in essence that the defendant must have acted in such a way that it would have been reasonable for him to expect that he would not be observed" (*United States* v. *Taborda* (2 Cir. 1980) 635 F.2d 131, 137).

In *Katz*, for example, the defendant occupied a telephone booth, shut the door and paid the toll (389 U.S. at 352). In

(footnote continued from previous page)

861, 865 (Fourth Amendment protections do not extend to sights seen in open fields).

the present case, Mr. Ciraolo erected high fences around his backyard. [6]

The State also misinterprets the requirement that the expectation of privacy must be reasonable. The question is not whether a person should be allowed to engage in illegal activities or possess contraband (see Br. for Petitioner 22-23). An illegal search is not made legal by the evidence it uncovers (*United States* v. *Di Re* (1948) 332 U.S. 581, 595). A warrantless search normally is unconstitutional even if contraband is found. The safeguards of the Fourth Amendment protect all individuals, known or suspected offenders as well as innocent people (*Ker* v. *California* (1963) 374 U.S. 23, 33). The controlling question is whether the police's intrusion infringed upon the personal and societal values protected by the Fourth Amendment (*Oliver* v. *United States*, supra, 104 S.Ct. at 1743). As the Court has stated:

> "Legitimation of expectations of privacy by law must have a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society" (*Rakas* v. *Illinois*, supra, 439 U.S. at 144, n. 12).

Here, the expectation of privacy in a fenced-in backyard has been recognized for centuries by Anglo-American common law and is supported by clear understandings recognized by society. That expectation is surely reasonable for Fourth Amendment purposes.

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[6] There is no support in the record for the suggestion made in the brief for the Criminal Justice Legal Foundation (hereinafter "Br. for Legal Foundation") that Mr. Ciraolo's backyard was in a regular flight path or subject to routine overflight by commercial aircraft. In any event, the slight probability of overflight by and unintended observation from such aircraft presents virtually no threat to legitimate privacy interests and expectations, in marked contrast to focused surveillance from a low-flying, specially chartered police airplane, as in this case.

The briefs submitted by petitioner and amicus curiae Criminal Justice Legal Foundation contend that activities that take place in a fenced-in residential backyard without an opaque dome over it are activities "open to view" (Br. for Petitioner 14), "obvious and patent" (id. at 25) and "exposed to everyone" (id. at 33). The Legal Foundation takes this premise to its illogical conclusion with the invention of a new exception to Fourth Amendment requirements: an alleged "open skies" exception (Br. for Legal Foundation 14).

In essence, the Legal Foundation argues that the validity of the search depends, not on the privacy associated with the home and immediately surrounding areas, but on the physical position of the police in surveilling those historically protected places (Br. for Legal Foundation 14). These arguments are not only foreign to Fourth Amendment doctrine but repugnant to society's expectations of what is private and what is not. They erroneously shift the focus of analysis from the reasonability of privacy expectations associated with a particular area to the location or means from or by which surveillance may be conducted. In this society, people do not normally expect their neighbors or the general public to surveil their backyards from an airplane. Uncritical use of labels like the "open skies" must not be allowed to destroy this expectation. [7] The "open field" doctrine refers to the area searched, not the location of the searchers (*Oliver* v. *United States*, supra, 104 S.Ct. at 1741-1742). Professor LaFave agrees that this is the proper analysis (1 LaFave, Search and Seizure, A Treatise on the Fourth Amendment (1978) §§2.2 and 2.3 & Supp. (1985)).

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[7] Of course, if a person's backyard abuts a hill or a high-rise building, that individual must recognize that these physical factors limit privacy, and the individual should conduct backyard activities, such as sunbathing, accordingly.

The fundamental issue presented by this case is whether the historic privacy interest enjoyed by all persons in their homes and immediately surrounding areas will be destroyed by exposure to extraordinary police surveillance because of the possibility that illegal activity may occasionally be discovered. The impairment of reasonable privacy interests and attendant freedom from governmental intrusions that such a course would entail compels its rejection.

II. AREAS NOT EXPOSED TO PUBLIC VIEW DO NOT LOSE FOURTH AMENDMENT PROTECTION BECAUSE OF THE AVAILABILITY OF TECHNOLOGICALLY ENHANCED SURVEILLANCE METHODS.

The implications of the present case are far-reaching. As early as 1928, Justice Brandeis warned, "The progress of science in furnishing the Government with means of espionage is not likely to stop with wire-tapping" (*Olmstead* v. *United States* (1928) 277 U.S. 438, 474 (dissenting opinion)). [8] In 1967, the Court recognized that "[t]he law, though jealous of individual privacy, has not kept pace with these advances in scientific knowledge" (*Berger* v. *New York* (1967) 388 U.S. 41, 49).

It is not being alarmist to recognize that police use of high- technology surveillance techniques poses a significant threat to Fourth Amendment protections. Police have at their disposal not only bugging devices, but thermal imaging systems for night surveillance,[9] high-powered optical equipment,[10] seismic sensors,[11] ultraviolet particle detec-

[8] Justice Murphy similarly commented that "the search of one's home or office no longer requires physical entry, for science has brought forth more effective devices for the invasion of a person's privacy * * *" (*Goldman* v. *United States* (1942) 316 U.S. 129, 139 (dissenting opinion)).

[9] *United States* v. *Carratala* (S.D.Fla.) No. 83-393-Cr-SMA(s).

[10] See, e.g., *United States* v. *Taborda* (2 Cir. 1980) 635 F.2d 131; *United States* v. *Kim* (1976) 415 F.Supp. 1252.

[11] *United States* v. *Allen* (9 Cir. 1980) 675 F.2d 1373, certiorari denied (1981) 454 U.S. 8[illegible]

tors[12] and a variety of surveillance aircraft.[13] The federal government has available to it much more sophisticated technological innovations, including high-flying reconnaissance jets and spy satellites. In the technological age of law enforcement, when abuse of power can damage lives as well as render privacy impossible, the Court must interpret the Fourth Amendment as it applies to novel surveillance methods to preserve its original purpose (see *Payton* v. *New York* (1979) 445 U.S. 573, 591, n. 33). [14]

Katz v. *United States* (1967) 389 U.S. 347 illustrates this Court's willingness to adapt its interpretation of the Fourth Amendment to meet new threats to privacy interests posed by technology. By shifting the focus from the protection of places to the protection of people, the Court recognized that an individual's privacy can be invaded through an electronic device without the person even knowing it. Aerial searches of a person's enclosed backyard pose dangers to legitimate privacy interest as serious as and precisely analogous to those posed by the bugging invalidated in *Katz*.

[12] *United States* v. *Kenaan* (1 Cir. 1974) 496 F.2d 181.

[13] See, e.g., *Dean* v. *Superior Court* (1973) 35 Cal.App.3d 112, 110 Cal.Rptr. 585 (airplane); *People* v. *Sneed* (1973) 32 Cal.App.3d 535, 108 Cal.Rptr. 146 (helicopter).

[14] Claims of police efficiency must not be allowed to be used as a pretext for eroding Fourth Amendment protections. In a discussion of the warrant requirement, the Court stated in *Coolidge* v. *New Hampshire* (1971) 403 U.S. 443, 481:

> "It is not an inconvenience to be somehow 'weighed' against the claims of police efficiency. It is, or should be, an important working part of our machinery of government, operating as a matter of course to check the 'well-intentioned but mistakenly over-zealous executive officers' [*Gouled* v. *United States* (1921) 255 U.S. 298, 304] who are a part of any system of law enforcement."

Although the Legal Foundation argues that aerial searches are necessary to locate small gardens in rural areas (Br. for Legal Foundation 22), Mr. Ciraolo and his family do not live in some isolated, impenetrable location, but in an urban area. This fact hints at the potential for abuse if warrantless aerial searches are permitted on the grounds that no other method of law enforcement is adequate.

In light of these technological developments, which expose the most intimate details of everyday living to intensive government surveillance without the necessity of physical trespass, this Court has recognized that the focus of Fourth Amendment analysis must be on a person's reasonable expectation of privacy in the area to be protected, rather than on the means which the government may employ to invade that privacy. In *United States* v. *Karo* (1984) 468 U.S. ____, 104 S.Ct. 3296, the Court held that the warrantless monitoring of an electronic beeper in a private residence violated the Fourth Amendment. Since the government obtained information that could not have been obtained by observation by members of the general public from outside the curtilage of the house, reasonable expectations of privacy were infringed just as if a government agent had entered the house without a warrant to search for the object sought.

> "Indiscriminate monitoring of property that has been withdrawn from public view would present far too serious a threat to privacy interests in the home to escape entirely some sort of Fourth Amendment oversight" (id. at 3304).

Similarly, in the instant case, Mr. Ciraolo's backyard had been fenced from public view. It was only by means of a specially chartered airplane flying at a low level that the government was able to intrude into the privacy of the curtilage.

In contrast, in *United States* v. *Knotts* (1983) 460 U.S. 276, the Court held that no violation occurred in the monitoring of a beeper as it traveled in a car and arrived in the area of a cabin. The critical factor distinguishing *Karo* was that in *Knotts*, the beeper's route could have been observed by police or any member of the public stationed along the way or following the suspect's car on the public highway (460 U.S. at 282, 285). "A person traveling in an

automobile on public thoroughfares has no reasonable expectations of privacy in his movements from one place to another" (id. at 281). Thus, in *Knotts*, the information obtained was "voluntarily conveyed to *anyone who wanted to look*" (id.) (emphasis added). In such circumstances, use of a beeper to assist the observation did not alter the Fourth Amendment analysis. In contrast, in the present case, as in *Karo*, the object of the police search was not available to anyone who wanted to look, and was entitled to Fourth Amendment protection against invasive surveillance by a low-flying, specially chartered police aircraft. [15]

The same analysis exposes the fallacy of the State's contention that the search in this case was analogous to police observation from a nearby hill or from the window of an apartment (Br. for Petitioner 19, 24-25). Although some courts have invalidated such searches (e.g., *United States* v. *Kim* (D.Haw. 1976) 415 F.Supp. 1252; *State* v. *Arno* (1979) 90 Cal.App.3d 505, 153 Cal.Rptr. 624), they raise a much different question than the instant case. In such circumstances, a person's property is by hypothesis exposed to routine observation from locations which are accessible to members of the general public. A person who

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[15] Many decisions have invalidated aerial searches and less intrusive warrantless surveillance involving technologically enhanced viewing where the place searched was one to which (unlike an open field) a reasonable expectation of privacy adhered. See, e.g., *United States* v. *Taborda* (2 Cir. 1980) 635 F.2d 131 (telescopic surveillance of interior of residence); *United States* v. *Kim* (D.Haw. 1976) 415 F.Supp. 1252 (search into apartment using high-powered telescope); *People* v. *Sneed* (1973) 32 Cal.App.3d 535, 108 Cal.Rptr. 146 (low-altitude helicopter search of private property); *State* v. *Kender* (1979) 60 Haw. 301, 588 P.2d 447 (telescopic search of backyard). Decisions sustaining searches in similar circumstances have generally involved situations in which the area was routinely exposed to public observation, was not protected from public view or was not closely associated with the home (*United States* v. *Allen* (9 Cir. 1980) 675 F.2d 1373, certiorari denied (1981) 454 U.S. 833 (helicopter search of property bordering federal land routinely traversed by Coast Guard helicopters); *Fullbright* v. *United States* (10 Cir. 1968) 392 F.2d 432, certiorari denied (1968) 393 U.S. 830 (search of open shed using binoculars); *Dean* v. *Superior Court* (1973) 35 Cal.App.3d 112, 110 Cal.Rptr. 585 (aerial search of unfenced three-quarter-acre field)).

knowingly exposes his activities to routine public observation is not entitled to prevent the police from also looking. In contrast, this case involved a setting in which routine observation by the general public could neither reasonably be anticipated nor guarded against. Here, the police used invasive modern technology to conduct surveillance of private areas that would not ordinarily be observable by members of the public. [16]

Warrantless aerial surveillance, in ways different from other methods of technologically aided surveillance, invites abuse. Everything on the ground that is not covered with blackout cloth is in open view. The homes and yards of suspected offenders and wholly innocent people alike are necessarily surveilled. Aerial searches are, in effect, dragnets. Legitimizing them would alter society's very concept of privacy. If this Court were to announce a rule that homeowners' privacy expectations are now curtailed by police surveillance from the air, the impact of this ruling would extend beyond the curtilage. Once one accepts petitioner's premise that the "airways" are "an open place" where the police must be expected to be, then private activities on a sundeck or viewed through a skylight or picture window would be as open to police surveillance as activities in the backyard. As one commentator has observed:

> "[A]nyone can protect himself against surveillance by retiring to the cellar, cloaking all the windows with thick caulking, turning off the lights and remaining absolutely quiet. This much withdrawal is not required in order to claim the benefit of the amendment because, if it were, the amendment's benefit would be too stingy to preserve the kind of open society to which we are committed and

[16] The State acknowledges that it would have been improper to scale the fence in this case to observe what was within the yard (Br. for Petitioner 20-21). The rationale which would legitimize an equivalent or greater invasion of privacy from an airplane or hovering helicopter is difficult to discern.

> in which the amendment is supposed to function. What kind of society is that?" (1 LaFave, Search and Seizure, A Treatise on the Fourth Amendment (1978) §2.2 at 261, quoting with approval Amsterdam, Perspectives on the Fourth Amendment (1974) 58 Minn.L.Rev. 349, 402). [17]

In sum, what a person "knowingly exposes to the public" (*Katz* v. *United States*, supra, 489 U.S. at 351) is accorded no Fourth Amendment protection. But a historically private area which a person takes reasonable precautions to guard from public view does not lose its constitutional protection by virtue of the failure to take extraordinary steps to guard against unusual police surveillance made possible solely by modern technology. To require extraordinary precautions to prevent such observations would fundamentally alter the protection of the Fourth Amendment as we now understand it. The Fourth Amendment must not be jettisoned because of crime statistics. As this Court stated in *Coolidge* v. *New Hampshire*, supra, 403 U.S. at 455:

> "In times of unrest, whether caused by crime or racial conflict or fear of internal subversion, this basic law and the values it represents may appear unrealistic or 'extravagant' to some. But the values were those of the authors of our fundamental constitutional concepts."

[17] To the same purpose, Ringel comments:

> "It would be meaningless to say that people have a right to be free from unreasonable searches if the right depends on making observation by outsiders impossible, particularly in light of the sophisticated techniques of surveillance available today" (Ringel, Searches & Seizures, Arrests and Confessions (1985) §8.1 at 8-3).

CONCLUSION

For the foregoing reasons, the judgment of the California Court of Appeals should be affirmed.

Respectfully submitted,

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